

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 7003 of 2004****WITH****CIVIL APPLICATION NOS.4731 & 4732 OF 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

BANK OF RAJASTHAN LTD. - Petitioner(s)**Versus****G.T.C.L MOBILE COM TECHNOLOGY LTD. & 12 - Respondent(s)****Appearance :**

MR AMAR N BHATT for Petitioner(s) : 1,
SERVED BY AFFIX.-(R) for Respondent(s) : 1 - 2.
MR ASHOK L SHAH for Respondent(s) : 1 - 2, 4 - 8.
RULE NOT RECD BACK for Respondent(s) : 3, 11,
MR PRANAV G DESAI for Respondent(s) : 9,
RULE SERVED for Respondent(s) : 10,
MS PJ DAWAWALA for Respondent(s) : 12,

=====

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 28/11/2005****ORAL JUDGMENT**

1. Shri SM Soparkar, learned senior counsel appearing

for Shri Amar Bhatt learned advocate appearing on behalf of the petitioner has submitted that in view of subsequent development granting the permission by the BIFR in favour of the petitioner to prosecute the proceedings before the DRT and consequently the DRT restoring the original order, which was recalled and which is the subject matter of the present Special Civil Application, the present Special Civil Application has become infructuous.

2. Under the circumstances without going into the merits of the case and in view of the above statement, the present Special Civil Application is disposed of as having become infructuous.

3. So far as the Civil Application Nos.4731/05 and 4732/05 filed by the applicant Federal Bank Limited, New Delhi (for short "the bank") for recalling the interim order passed by this court dated 9-2-2005 in main Special Civil Application No.7003/04 by which the learned Single Judge of this court has directed the BSNL to deposit Rs.1,20,21,297/- before the Registry of this court, which was ultimately directed to be invested in the Fixed Deposit, initially for a period of one year in the State Bank of India, High Court Branch is concerned, it is required to be noted that the applicant - Bank is

claiming to recover the amount which is due and payable by the respondent No.1 to the applicant - Bank and which they were recovering directly from the BSNL on the basis of the NOC given by the respondent No.1. Shri Soparkar learned senior counsel appearing on behalf of the petitioner has submitted that as such there was already an interim order passed by the DRT dated 7-7-2000, the reference of which is in the order dated 1-6-2004, which reads as under:

- 1.The defendants are restrained from selling, transferring, alienating otherwise disposing of or dealing with or parting with possession of their movable and immovable properties hypothecated and mortgaged to the application bank;
- 2.The defendants are also directed to deposit all book-debts and other receivable amount from the different consumers and persons who are dealing with the defendant No.1 company including Tele Communication Department and all money received by the defendant No.1 should be deposited in the bank."

He has further submitted that even pursuant to the order dated 1-6-2004, which is now restored while appointing the Receiver, the DRT has observed that the

Receiver is appointed on all the movable and immovable properties, current assets, book dates of the defendant no.1 - Company. Therefore, it is submitted by him that even BSNL and/or any consumers are restrained from making any payment which is due and payable to the respondent No.1. He has also further submitted that as such the aforesaid orders dated 7-7-2000 and 1-6-2004 has become final. At this stage, Shri Khare learned advocate for the applicant Bank has submitted that as such the applicant Bank is not a party to the proceedings before the DRT and the aforesaid interim order is not binding to them. He has also further submitted that as such the applicant Bank was not even the party to the main Special Civil Application No.7003/2004. Be that it may the fact remains that there is an interim order passed by the DRT. By virtue of the aforesaid interim orders dated 7-7-2000 and/or dated 1-6-2004, it appears that the applicant - Bank is an affected party and/or it will not be in a position to recover any amount on the basis of the alleged NOC on the basis of which the applicant Bank has already recovered more than Rs.8 crores. Under the circumstances, it will be appropriate to relegate the applicant Bank to approach the DRT by way of an appropriate application allowing them to be joined as

party respondent - defendant in the main application either as third party or affected party and to request the DRT for vacating the interim order, which affects them and/or for modification of the said order. However, it will be open for the applicant Bank to take all contentions which are available to them and which are taken in the present Special Civil Application and whatever available to them under the law. Shri Khare has submitted that the applicant Bank would be submitting an appropriate application within a period of 4 weeks from today and on such application is being made, the DRT is directed to pass an appropriate order in accordance with law and on merits as early as possible preferably within a period of six weeks thereafter.

4. It is born out from the record that it is the case of the applicant that they are entitled to approximately Rs.39 lacs and the amount which is deposited pursuant to the order passed by this court is of Rs.1,20,21,297/-. On passing an appropriate order by the DRT on the application to be submitted by the applicant Bank, it will be open for the applicant Bank to move an appropriate application before this court for withdrawal of the amount which is at present deposited with the State Bank of India, High Court branch pursuant to the

order passed by this court. So far as the balance amount is concerned, the DRT is also directed to pass appropriate order either it should be paid to the Receiver and/or different parties/ Banks as early as possible and on passing such order the Receiver/ concerned parties/Banks may approach before this court by way of an application for withdrawal of the amount from the amount which is lying with the State Bank of India, High Court branch. Such an order to be passed for Rs.80,21,297/- (i.e.Rs.1,20,21,297/- - 40,00,000/-) by the DRT as early as possible preferably within a period of 6 weeks from the date of receipt of this order. Until further orders, the amount which is deposited pursuant to the interim order passed by this court lying as Fixed Deposit with the State Bank of India, High Court branch be continued to be remained with the same Bank.

5. With the above observations and directions, the present Civil Applications are also disposed of. Rule is discharged in each application. However, there will be no order as to costs.

(M.R. SHAH, J)

shekhar/-